

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA
JOHNSTOWN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No: 14-mj-00040

vs.

Johnstown, Pennsylvania
SEPTEMBER 29, 2014

JOSEPH D. MAURIZIO, JR.,

Defendant.

TRANSCRIPT OF DETENTION PROCEEDINGS
BEFORE KEITH A. PESTO
DISTRICT MAGISTRATE JUDGE

A-P-P-E-A-R-A-N-C-E-S

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Proceedings recorded by mechanical stenography,
transcript produced with computer.

I N D E X

September 29, 2014

Defendant's

<u>Witness:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>
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VINCENT E. VENA	36	39	
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1 P R O C E E D I N G S

2 (The proceedings convened on September 29, 2014,
3 commencing at 10:07 a.m.)

4 MR. PASSARELLO: Your Honor, may we approach,
5 briefly?

6 THE COURT: Do you want this on the record or
7 off?

8 MS. HAINES: On.

9 (Discussion held at sidebar.)

10 MR. PASSARELLO: I have Father Thomas Hopko with
11 me. He is the canon lawyer through the diocese for
12 Father Maurizio. I would ask that he be allowed to sit
13 at the table with me --

14 THE COURT: That's fine. He's co-counsel as far
15 as that's concerned. Yeah.

16 Apparently, because of the identity of the
17 parties the courtroom is packed, and there was a request
18 from the CSOs that they use the jury box to put
19 spectators in, and I said no to that because the bar is
20 the bar.

21 If he's an admitted attorney he's on this side of
22 the bar.

23 MR. PASSARELLO: Well, he's a lawyer --

24 THE COURT: If he's a canon lawyer -- you would
25 bring your paralegal, you would bring your secretary,

1 they're a part of your defense team, that's fine.

2 MR. PASSARELLO: Thank you.

3 MS. HAINES: I am not opposed -- I know usually
4 they have the row right behind me closed because of
5 previous incidents. If they want to put, just for ease
6 of people standing, if they want to put the media back
7 there I don't care. If you authorize that. If the
8 marshals are okay with that, I don't care if they open
9 that first row right behind me for media.

10 THE COURT: Oh. You mean the separate chairs on
11 this side of the bar?

12 MS. HAINES: No, no, no. Behind the bar. The
13 first row behind the prosecution is usually roped off --

14 THE COURT: Oh. Well, I'm not going to interfere
15 with the marshals. It's their call, whatever they want
16 to do is fine.

17 MS. PRICE: They just asked me what you want to
18 do, that's why --

19 THE COURT: I don't anticipate any disruption, so
20 if they want to use those for seats that's fine.

21 Anything else?

22 MR. PASSARELLO: No, Your Honor.

23 MS. HAINES: In talking with Mr. Passarello, the
24 intent is for the government to proceed by proffer as we
25 have in the past.

1 THE COURT: Okay. I'll ask that on the record.

2 MS. HAINES: Okay.

3 MR. PASSARELLO: Thank you, Your Honor.

4 (The following proceedings were held in open
5 court:)

6 THE COURT: Let's go on the record. It's shortly
7 after 10 o'clock on Monday, September 29th, 2014. We're
8 in Courtroom A for a detention hearing in the United
9 States v. Joseph D. Maurizio, Jr. My number 14-40-mj.
10 The government is present represented by Attorney
11 Haines, and the defendant is present represented by
12 Attorney Passarello.

13 There was a little bit of discussion before we
14 went on the record about seating. This is probably the
15 most crowded courtroom I've had in 20 years. Folks, we
16 do this every week. The lurid nature of the publicity
17 involved has packed the courtroom, but this is an
18 ordinary proceeding we do all the time. The courtroom
19 is always open; you're welcome to come any time. But
20 because of the nature of the proceeding it's attracted a
21 little more than the usual attention. That does not
22 mean that I do not expect decorum to be maintained.

23 With that said, back to the government. Now,
24 normally in a detention hearing the government either
25 proceeds by proffer from the pretrial services report or

1 presents evidence. Which do you please to do today?

2 MS. HAINES: We intend to proceed by proffer,
3 Your Honor.

4 THE COURT: Very well.

5 Do you have any witnesses, Attorney Passarello?

6 MR. PASSARELLO: I do, Your Honor.

7 THE COURT: Okay. Do you want to hold them in
8 reserve until you've heard what the government has to
9 say, or do you want them sworn now?

10 MR. PASSARELLO: I apologize, Your Honor. I
11 would hold them in reserve until I hear the proffer.

12 THE COURT: All right. Go ahead. All right,
13 government.

14 MS. HAINES: Well, Your Honor, we are proceeding
15 in this case under a presumption of detention case based
16 upon the first charge in the complaint, which is the 18
17 United States Code, Section 2423(c) offense. And being
18 that it's a presumption case, we are invoking that
19 presumption, which pushes the burden to the defense to
20 establish terms and conditions or reasons why or how
21 they can rebut that presumption. That is how the
22 government intends to proceed.

23 THE COURT: All right. So you have nothing
24 beyond the original complaint and the pretrial services
25 report which gives the defendant's history, ties to the

1 community, and other personal circumstances.

2 MS. HAINES: Your Honor, I do have an additional
3 proffer. I wasn't sure if you want me to make my
4 proffer right now --

5 THE COURT: Yeah. Go ahead.

6 MS. HAINES: Sure.

7 Your Honor, the United States concurs
8 wholeheartedly with the pretrial services report which
9 does recommend detention of Father Maurizio in this
10 case. They base their detention finding on both a risk
11 of flight as well as a danger to the community, and the
12 government concurs and wholly supports those findings.

13 We would bring to the Court's attention, in
14 addition to the fact that it is, like I stated, a
15 presumption of detention case, the following for you to
16 consider: We'll do the risk of flight first. We
17 believe that Father Maurizio is a risk of flight. As
18 the pretrial services report pretty well those Father
19 Maurizio has engaged in extensive travel outside of the
20 confines of the United States. Just looking in his last
21 year of travel, he has been in and out of the States I
22 believe seven or eight times to third-world or Central
23 American countries.

24 With that being said, obviously he has
25 established contacts in those locations. We are not

1 sure of all of those contacts or his loyalty or their
2 loyalty to him outside of the confines of the United
3 States. We believe, though, those circumstances
4 definitely pose a risk of flight.

5 We also look at the fact that while we have
6 secured.

7 His passport, I have talked with our Homeland
8 Security agents, and while they have asked to be
9 basically informed of any attempt by Father Maurizio to
10 obtain another passport, they have also talked with me
11 about the fact that reality is if someone does try to
12 attempt to get another passport, sometimes the reality
13 of it is they get that passport and are either out of
14 the country through Canada and elsewhere before the
15 agents even get that information. With that being said,
16 we believe that's yet another factor of a risk of
17 flight.

18 We also, through our investigation, are aware of
19 or have heard about large sums of money in the past that
20 the defendant has had in his possession. We are still
21 tracking those allegations and those circumstances down.
22 But yet that's another concern of ours, that these sums
23 of money we've heard about we're not sure where they
24 came from, who they came from, where they may be or if
25 they currently exist in those amounts, which we believe

1 is yet another concern of him leaving.

2 The crux and the main points that we'd like to
3 make, though, for why the defendant should remain
4 detained go to the danger to the community, Your Honor.

5 When you look at the allegations themselves that
6 are contained within the criminal complaint there are
7 the two charges: Basically, the sex tourism charge,
8 which the presumption kicks in on, which involves
9 allegations that Father Maurizio engaged with Honduran
10 minor males on multiple occasions while he was visiting
11 and supposedly on mission-related work.

12 As the criminal complaint shows, the Homeland
13 Security agents actually were in Honduras, boots on the
14 ground, talking to some of these victims. They are
15 still in pursuit of finding other victims. Because, of
16 course, as they talk to some they are given more
17 information about others that exist out there.

18 As the Court is aware, Honduras is a very poor
19 country. The living conditions of these victims are
20 horrific. These agents are finding them and talking
21 with them. The ones we've talked to so far -- it's
22 outlined in the complaint -- they have come forward
23 after we have found them. Have looked for and found
24 them. It's not like they're knocking down the
25 government's door in some alleged conspiracy against

1 Father Maurizio. The agents have found them and talked
2 to these victims. They have explained in detail what
3 Father Maurizio did to them, and they're outlined in the
4 complaint.

5 They talk about how he would pay in candy to have
6 sexual acts performed in front of him, by him, and for
7 him. They talk about how he took pictures of these
8 children while they were naked. It talks about how he
9 took pictures of them while they were showering, and he
10 propositioned them with money for additional pictures,
11 for their silence.

12 The victims talk about how they were asked by
13 Father Maurizio -- and these were minor boys -- that
14 they were asked by him to masturbate themselves while he
15 watched. They talked about how they were photographed
16 by the defendant while they were masturbating at his
17 direction. They told us about how he talked to one
18 child and asked the child how much he would charge for
19 the child to masturbate in front of him. When the child
20 refused to do that, the child victim tells us that the
21 father paid him for his silence, about what he had just
22 done and what he had just asked for.

23 We also have a victim who talks about how the
24 father placed his hand on his genitals. We also have a
25 -- the boy who talks about after the minor boy's penis

1 was touched by the father, how the father immediately
2 gave him money for that act. And we also have, most
3 horrifically, a victim who talks about how in the chapel
4 the father performed oral sex on a 14-year-old boy.

5 All this during a time he was in Honduras on a
6 mission to basically help children, he used and abused
7 them.

8 That is just a small summary of the evidence that
9 goes on the sex tourism, which is the rebuttal for the
10 presumption.

11 We also then have the second count in the
12 indictment which deals with the possession of child
13 pornography. And that is as a result of about, about
14 almost two and a half weeks ago on September 12th
15 Homeland Security officers and agents executed search
16 warrants at the home farm of the defendant, as well as
17 the rectory at the parish where the father performed
18 services.

19 As a result of our obtaining literally thousands
20 of pieces of evidence, we have yet to scratch the
21 surface but we have already uncovered images of child
22 pornography.

23 And I want to point out for purposes of just
24 where the investigation still has yet to go, because
25 it's a fluid and ongoing investigation. Obviously,

1 we're at the complaint stage, but this is rapidly
2 evolving into many other areas and many other possible
3 charges. Speaking just to the images that are charged
4 in the complaint for the possession of child
5 pornography, they are graphic images of a prepubescent
6 minor, who it appears he has been posed, fully naked,
7 genitalia exposed, up on the side of a filthy bed with a
8 leg, it appears to be posed in such a way to highlight
9 the lascivious exhibition of his genitalia.

10 The investigation has shown that this child had
11 polio, which leads us to believe he had to be posed in
12 that manner, that he possibly wasn't capable of doing it
13 on his own. As the investigation develops what we
14 believe, and what we intend to continue to pursue, is
15 that Father Maurizio took those pictures.

16 As the Court is aware, production or manufacture
17 of child pornography is a mandatory minimum of 15 years
18 on every single picture that was taken.

19 In addition to those pictures of the child that
20 were seized and in our possession that deals with
21 Count 2, the charges in the complaint, we also have
22 various other pictures of what we are terming "child
23 erotica." I can't give you a number, but there are
24 several series of pictures where there are fully naked
25 children, either one in particular the same child, seven

1 or eight pictures of this fully naked toddler from all
2 various directions that the camera took pictures of him.
3 We have other pictures of children frolicking in water
4 completely naked. The interesting thing --

5 THE COURT: Hang on a second. Let me stop you
6 there, because my parents would be in jail under that,
7 because everybody's got pictures of kids in kiddie
8 pools.

9 Now stop -- let's go back, though, to the child
10 with polio who's posed. I want to hear about that.
11 Tell me what you've got in the way of evidence that
12 shows that this is related to the sex tourism case. Is
13 this child that's posed a person that would have been
14 associated with the humanitarian mission that the
15 defendant is associated with?

16 MS. HAINES: This child where he is located,
17 where he lives, he lives at the bottom of the hill. He
18 lives with his mother at the bottom of the hill, where
19 if you go up the hill is where the missionary HIM and
20 Father Maurizio would go. So he is right down the hill.
21 And he had contact with this child and the mother during
22 his trips to Honduras.

23 THE COURT: Okay. So you're inferring that this
24 is a manufactured picture, not just a -- because, you
25 know, once again, we do this every week. If this were a

1 person who's just downloading stuff off the internet you
2 probably wouldn't even be moving for detention.

3 MS. HAINES: Well, Your Honor, correct. What the
4 importance of this is is the investigation to date has
5 been able to identify who the child is, the location
6 that the picture was taken -- which, like I said, is
7 right down the hill from the Honduran nonprofit where
8 the defendant was, and has been able to identify through
9 contact back and forth between Honduran authorities who
10 this child is and where he lives, and the picture was
11 taken at a time when Father Maurizio was in Honduras.

12 THE COURT: All right. That clarifies things.

13 The images, though, that you're referring to, is
14 it what you set forth in Paragraph 16 of the complaint?

15 MS. HAINES: Before I answer let me make sure I
16 look at Paragraph 16.

17 THE COURT: You're giving me more detail about
18 the same incident that you mentioned in Paragraph 16 of
19 the complaint.

20 MS. HAINES: Yes, Your Honor.

21 THE COURT: Okay.

22 MS. HAINES: Yes, Your Honor, and --

23 THE COURT: So to follow up though, that was
24 2009.

25 MS. HAINES: Correct.

1 THE COURT: And those allegations, according to
2 your allegations to me, were in the hands of the FBI and
3 -- the complaints were made in 2009, so this complaint
4 has been out there since 2009.

5 MS. HAINES: The complaint dealing with
6 allegations of Father Maurizio touching and
7 inappropriate sexual contact with children, yes, dates
8 back to 2009.

9 THE COURT: So this is something new.

10 MS. HAINES: The pictures we are talking about
11 are pictures we saw for the first time when seized back
12 on September 12th -- just two, two and a half weeks
13 ago -- when we seized his computer and we took hard
14 drives and a camera and over 280 CDs. These were things
15 that the child pornography charge that is in the
16 complaint, Count Number 2, that is derived from evidence
17 we seized on September 12th, just two weeks ago.

18 THE COURT: Right.

19 MS. HAINES: The pictures on the computer. The
20 other pictures I'm talking about too, you said, "oh,
21 your parents could be in trouble for that" --

22 THE COURT: Actually, what I'm actually quoting
23 is Kelly Preston from the movie *Sky High* where she --
24 it's the kid's first day of high school, and how can you
25 embarrass a kid more than talk about them frolicking in

1 the kiddie pool, so.

2 MS. HAINES: But --

3 THE COURT: In any case, back to this. We're
4 talking about a 2009 image, correct?

5 MS. HAINES: Right. Through our investigation,
6 the reason we're able to pretty much pinpoint when this
7 picture was taken, this child is now deceased. And we
8 were able to find out when he died and date back and
9 work back to -- and looking at him as well you can tell
10 an age on him.

11 THE COURT: All right. But my charge, as you
12 know, is not guilt or innocence. My charge is danger to
13 the community. So do you have anything more recent than
14 2009?

15 MS. HAINES: Yes. Yes. And, Your Honor, I'm
16 getting there. And the reason I laid the foundation,
17 since this is a complaint detention hearing you are
18 allowed -- because it hasn't gone in front of the grand
19 jury yet you are allowed to hear, as the grand jury
20 would, the facts and circumstances underlying this when
21 you're determining detention.

22 THE COURT: Right.

23 MS. HAINES: So I think it's important for you to
24 take what happened in 2009, as I bring you forward, as
25 you consider detention on a complaint rather than

1 an affidavit.

2 THE COURT: Right.

3 MS. HAINES: Excuse me, rather than an
4 indictment.

5 THE COURT: Right.

6 MS. HAINES: So we've got all that going on in
7 2009.

8 THE COURT: Right.

9 MS. HAINES: Bringing things more forward, like I
10 said, we executed a search warrant on September 12th.
11 We find the images of child pornography. We also, like
12 I said, we've just scratched the surface in looking at
13 everything so far that we have seized. But just to give
14 you a flavor of the more recent stuff we found on either
15 a laptop and/or a loose hard drive that came out of the
16 office rectory more relevant to today and detention, on
17 Father Maurizio's, one of his media items that we seized
18 we have him accessing websites, I believe in July. We
19 have him accessing websites such as [www:justusboys.com](http://www.justusboys.com).
20 Now, when we did a quick preview of that website
21 it appears, when you open the website, to be various
22 videos and/or pictures and images of adult homosexual
23 acts. On the left-hand side there are different
24 categories on justusboys.com. One of them is younger.
25 We went to that. We have not done a complete preview of

1 all that, but it caught our attention. We also have him
2 -- there's an article that was downloaded on his
3 computer called -- it referred to Costa Rica sex
4 tourism. We know he travels back and forth to Costa
5 Rica. That concerned us.

6 We also had on his computer which was downloaded
7 a 16-year-old Mr. Philippine swimsuit pageant long
8 video. That while the 16 year olds from what we saw
9 were clothed, they were scantily clothed in very small
10 bathing suits, and it seemed to focus in or be very --
11 emphasizing the areas of this Mr. Philippines 16 year
12 old video.

13 Also very compelling, as the Court may be aware,
14 as a result of obtaining the complaint and the arrest
15 warrant last week, there was information put out to the
16 public regarding, you know, any tips or further
17 information, which is standard in these types of cases
18 because it is an ongoing investigation. And without
19 putting any great detail out, we have received tips of
20 potential local victims at the hands of Father Maurizio.
21 Those things are being tracked down immediately by law
22 enforcement.

23 But I think it's important for this Court to
24 understand when we're talking about danger to the
25 community, we do have people coming forward naming

1 specific names of minor boys in this district that may
2 be victims. We have yet to even interview them because
3 of how quickly this is all happening.

4 Releasing Father Maurizio out into the public
5 when we are still getting our hands around these
6 possible victims and bringing them in and talking with
7 them would be a complete -- a possibility of
8 obstruction, but it would be very detrimental.

9 THE COURT: Okay. But you're piling supposition
10 on supposition. We have an accusation that we haven't
11 even investigated yet, and if you let him out he's going
12 to go interfere with an investigation of something we
13 haven't even investigated yet.

14 MS. HAINES: But there's a presumption of
15 detention, Your Honor, and I'm telling you what's out
16 there --

17 THE COURT: Yeah. But I'm not required to just
18 say, you know, the government wants it, I've got to give
19 it to them. I mean, there --

20 MS. HAINES: No, but --

21 THE COURT: There has to be some evidence. What
22 you've got is an accusation.

23 MS. HAINES: What we have is an accusation,
24 correct, Your Honor, that came in from --

25 THE COURT: You have an accusation that you

1 haven't checked out yet.

2 MS. HAINES: We have not, Your Honor. They are
3 being interviewed. The accusation just came in this
4 weekend.

5 THE COURT: Okay.

6 MS. HAINES: It's from a credible source in our
7 investigation, because we know the person who gave us
8 the information and they identified the potential
9 victims. So that is going forward as of today.

10 THE COURT: Is there a date on the alleged
11 occurrence?

12 MS. HAINES: If I could ask the --

13 THE COURT: Sure.

14 MS. HAINES: -- agents?

15 (An off-the-record discussion was held.)

16 MS. HAINES: The agents informed me that there
17 was no specific date given, but that it's recent
18 behavior by the children that caused the concern, and
19 that these are minor boys that have had a lot of access
20 to the father, both supervised and unsupervised. And
21 that while there's not a date given, these are
22 definitely minors and this has occurred recently.

23 THE COURT: Okay. So it would be fair to say
24 after this story broke some parent said to their kid,
25 did anything like this ever happen to you, and he said,

1 well, yeah, mom, as a matter of fact. And that's how it
2 all started; is that what you're putting out there?

3 MS. HAINES: I don't believe that's the exact
4 scenario. As the tip came in, it is a relative of the
5 children that is responding and relaying, I think you
6 want to interview those of us that are around the
7 children as well as these children, because this is what
8 we have witnessed by these children who have been around
9 him on quite a frequent basis.

10 THE COURT: And that behavior is taking place
11 within the last year?

12 (An off-the-record discussion was held.)

13 MS. HAINES: What the agent tells me is these
14 children that have been possibly alleged as victims, we
15 have seen extensive photography by the father of these
16 children on his cell phone within the last year.

17 THE COURT: Okay. All right. That at least
18 gives me some date. Can you give me a rough age for
19 these kids?

20 MS. HAINES: Seven and five.

21 THE COURT: Okay. Thanks. I know I'm
22 interrupting the flow of your presentation --

23 MS. HAINES: That's okay.

24 THE COURT: -- so if you want to take your notes
25 and get back on track go ahead.

1 MS. HAINES: I'm sort of in the part where we're
2 trying to educate the Court just on some of the recent
3 events that have happened, as this obviously has just
4 evolved. We've got the stuff in the past. You see from
5 the pretrial services report he has had various recent
6 travels.

7 I can say another thing that's quite recent that
8 we have in our possession is the father on July 30th of
9 2014, and August 1st of '14, we seized during a border
10 search his cell phone when he was coming back into the
11 country from when he was visiting Costa Rica and
12 Nicaragua on one of his mission trips. And during a
13 border search we were able to seize his cell phone. And
14 during that border search what the investigators used
15 was a Google application that does translation between
16 two parties that are having a conversation in different
17 languages.

18 As a result of the seizure of his phone there at
19 the end of July, beginning of August, we seized and used
20 the Google app to translate a conversation that went on
21 between Father Maurizio and what we believe to be one,
22 if not two -- because there's two different boys' names
23 that are said during the conversation -- that are
24 minors. And just sort of as an idea of some of this
25 conversation that was translated and that HSI agents

1 have, there is questioning going back and forth from the
2 father to these minor boy or boys about, Do you have a
3 girlfriend, Do you have sex with your girlfriend. He
4 also asks if the minor boy would like to come to the
5 United States with him. He also asks if the minor child
6 is going to miss him, and hopefully he'll see him again
7 when he comes back in March of 2015. And says
8 basically, Are you going to miss me, I won't be back
9 until March of 2015 because I have -- and he lists all
10 the other countries that he intends to go and visit
11 prior to him returning to this country.

12 So the concern, of course, was the conversation
13 between the father and the minor child. Once again
14 taking it into -- not segregating one little piece of
15 evidence but taking it into the totality of what we
16 have, you know, that translation between a minor child
17 and the defendant, with finding child pornography on his
18 rectory computer, along with other victims potentially
19 coming forward with things we still have to look at, and
20 still having to look at thousands and thousands of
21 pieces of images yet to date with the presumption, the
22 risk of flight we've already articulated and what we
23 believe is a true danger to the community with his
24 release, we are asking that he be detained.

25 THE COURT: Okay. How do you know that the --

1 this is a text exchange? This is an exchange by text
2 that you seized from the cell phone?

3 (An off-the-record discussion was held.)

4 MS. HAINES: The agent --

5 THE COURT: Okay. All right. Overhearing
6 what -- you had a conversation with the agent. This is
7 an oral conversation?

8 MS. HAINES: Or texting into the phone. She's
9 not sure if it's orally being said into the phone and
10 then being translated by the app, or being texted into
11 the phone and then being translated by the app.

12 THE COURT: Okay. Well, I was wondering how you
13 can determine that -- it's unusual for a person to text
14 or to say, Hello, John, age 14. You usually say, Hello,
15 John or text, Hello, John.

16 How do you know the person's a minor?

17 MS. HAINES: Because there's two different names
18 that are specifically mentioned in the text. And the
19 discussion revolved around that the boy is currently 16
20 years old, and that when he comes back -- when Maurizio
21 comes back in March of 2015 the child may be 18 by then.
22 And I apologize, I should have said that --

23 THE COURT: No, no. That's okay.

24 MS. HAINES: That's the translation.

25 THE COURT: And then one thing that I'm just kind

1 of curious about: If I'm traveling internationally the
2 government can seize my cell phone?

3 MS. HAINES: Border detention. Border, yes, when
4 you come back --

5 THE COURT: Without any --

6 MS. HAINES: It's called a border search.

7 THE COURT: Oh, so they just do that routinely on
8 the basis of a profile or --

9 MS. HAINES: It can be a random border search.
10 It can be sort of your number's up and your stuff gets
11 searched, or there can be some type of reasonable
12 suspicion that may lay reason why those bags are looked
13 at for a border search.

14 But the analysis on the personal cell phone of
15 the defendant was done, pursuant to a border search when
16 he came back into the country, and I believe the port
17 was Miami -- it was Atlanta. When he came back into the
18 country through Atlanta a border search was conducted at
19 that point by HSI agents.

20 THE COURT: Okay. All right. I'm not
21 quarrelling with the Fourth Amendment law. I just find
22 it ironic that on the one hand, back when you were
23 talking about risk of flight you said, We can't be sure
24 that he's not going to get a passport and fly away
25 without us knowing about it. And on the other hand you

1 just kind of routinely seize people's cell phones when
2 they come into the country from a trip to Paris or
3 whatever.

4 MS. HAINES: Well, that's predicated on them
5 coming back though. In that situation, coming back into
6 Atlanta they got it. We're talking about someone is
7 able to secure a passport after we've seized it, I doubt
8 they'd be coming back to us. That's our fear, the
9 defendant, that if he finds another way to obtain
10 another passport or make contacts in another country or
11 obtain money, that we wouldn't have that luxury of
12 coming back.

13 THE COURT: Oh, I understand. I understand what
14 you're afraid of. I think -- I just think it's ironic
15 about why you say you fear that. All right. Okay. I
16 think I understand the government's case.

17 MS. HAINES: Thank you, Your Honor.

18 THE COURT: Thanks.

19 Attorney Passarello.

20 MR. PASSARELLO: Morning, Your Honor.

21 THE COURT: Good morning.

22 MR. PASSARELLO: Your Honor, I think what's
23 important to start with is what is before this Court
24 today based upon the law in question. Obviously, there
25 is a presumption. However, the Court's focus is

1 twofold: One, is the defendant a flight risk. And the
2 Commonwealth -- the United States -- must prove that by
3 a preponderance. Sorry for that slip.

4 THE COURT: It's okay. I know you practice law
5 in Blair County where Pennsylvania is the Commonwealth,
6 and here in federal court the prosecutor is the
7 government.

8 MR. PASSARELLO: Yes.

9 And the second, Judge, is that the defendant
10 presents a danger to the community, and that's by clear
11 and convincing evidence.

12 Let's just talk about the first one first. Look,
13 I believe that if they've seized his passport, they've
14 taken his passport. And if the Court puts a condition
15 that he has to be on home detention, the fear of flight
16 is minimal here. It amazes me that the United States
17 can come in here and say, Well, even though we got this
18 flagged and we believe that he does all this kind of
19 stuff to these children in all these different
20 countries, somehow some way he may still be able to get
21 a passport and may still be able to get through customs
22 and may still be able to get to a different country.

23 It amazes me that they say that, especially if
24 they're going to flag him. I don't think there's any
25 risk of flight here at all.

1 THE COURT: Well, just to stop you there. Under
2 the statute I'm operating under, in any case that
3 involves these allegations, any release shall contain at
4 a minimum a condition of electronic monitoring, plus
5 restrictions on personal associations, places of abode,
6 travel, reporting on a regular basis, and curfew.

7 MR. PASSARELLO: Absolutely.

8 THE COURT: But at the very least, if he gets out
9 he gets out with an ankle bracelet and under home
10 confinement so --

11 MR. PASSARELLO: Correct.

12 THE COURT: -- that's what you're saying.

13 MR. PASSARELLO: That is exactly what I'm saying,
14 Judge. And they've taken his passport. I don't see how
15 he can even get out of the country. The second, Judge,
16 is --

17 THE COURT: Well, actually, we had a case about a
18 year ago I think a person who had been released, and the
19 week before he was scheduled to enter his plea he just
20 got on a plane and went to Australia or someplace. We
21 don't have an extradition treaty, and it was kind of an
22 "egg on our face" situation, so it does happen.

23 MR. PASSARELLO: Okay. In this case, Your Honor,
24 I believe, based upon the taking of the passport, the
25 conditions that would be placed on this defendant, I

1 don't think the Commonwealth meets that burden that he
2 poses a flight risk.

3 The second, obviously, is the defendant presents
4 a danger to the community. And I understand, Judge,
5 there's a presumption. It is a rebuttable presumption,
6 and it is not a burden of proof on me, it's been
7 characterized as a burden of production.

8 If the Court takes a look at what the
9 Commonwealth has presented, what they have presented is,
10 We believe we may be able to show this; we believe that
11 there may be other victims that are coming out; we
12 believe we -- none of those have been charged.

13 What we're charged with here is, according to the
14 affidavit, one picture of an individual boy back in 2009
15 who now they inform me has been deceased. And if the
16 Court -- I believe under the statute one picture
17 actually is an affirmative defense for the --

18 THE COURT: Actually, Paragraph 16 says images,
19 plural. But Attorney Haines was just referring to one
20 particular picture. So they say they have images,
21 quote.

22 MR. PASSARELLO: They say they have images, and
23 she characterized them as child erotica not child
24 pornography. The only image that has been told before
25 this Court of child pornography that they allege is the

1 image of this one boy. And I believe it's only one
2 image, although she may have said two. I apologize,
3 two. But under the statute I still think that may be an
4 affirmative defense. I think it's three or less.

5 Secondly, Your Honor, if Father Maurizio's
6 released on home detention there is -- I don't believe
7 he poses a danger to the community. I have a bunch of
8 witnesses here, including family members as well as
9 parishioners, that will tell you wonderful things about
10 Father Maurizio, and I'm sure maybe the Court doesn't
11 want to hear them.

12 But if the Court takes a look at the
13 pre-detention investigation you'll see a number of
14 things. One is ties to the community --

15 THE COURT: He's living on the property that he
16 was born on that belonged to his parents, right?

17 MR. PASSARELLO: He has lived pretty much here
18 all of his life. He's been a priest for approximately
19 27 years. He's done missionary work, and wonderful
20 missionary work. They portray him as a monster. I
21 portray him as a wonderful -- he does wonderful
22 missionary work for 17 years, has helped a ton of
23 underprivileged individuals.

24 Judge, he has, obviously, no prior criminal
25 record, has never been a flight risk before. And I will

1 inform the Court of this: These allegations reared
2 their heads back in 2009. We hired a defense team down
3 in Honduras to investigate those allegations. They went
4 no where. They were with the FBI until Laurel
5 Highlands, and no charges have been filed. These in
6 essence, to me, are a regurgitation of those charges.

7 And I don't know the boys they've interviewed
8 because they only list them as John Doe One, John Doe
9 Two, and John Doe Three. However, we have interviewed
10 boys from the Honduras, and I have declarations from
11 those boys that will inform you that Father Joe did
12 nothing of the kind, and that they were offered money,
13 toys, and candy in order to say things about Father Joe
14 that they deemed to be untrue. That's the climate that
15 we are in in this case.

16 Now, the danger to the community, look, as soon
17 as you put this out in the newspaper or the tip line
18 people are going to -- I mean, people are going to say,
19 Jimmy was abused, Johnny was abused. There has never
20 been any indication until these charges were filed of
21 any child that was in the parish of Father Maurizio, was
22 an alter boy for Father Maurizio, or any type of
23 relation to Father Maurizio had ever made an allegation
24 against him at all in the United States. None. None at
25 all.

1 He has strong family support. He has strong
2 community ties. He has no prior record. He has done --
3 he served in the military. He served in the United
4 States Navy, was honorably discharged.

5 I believe, Your Honor, that you have to look at
6 what's before you today. Not supposition, not
7 speculation, not any of that, in order to make your
8 determination.

9 Now, look, if they come up with more stuff down
10 the road there's always the opportunity to come back.
11 But for purposes of today, even though the presumption
12 exists, I believe we've rebutted it with the evidence in
13 the presentence and my argument here today.

14 And I would also like to present at least some
15 witnesses who have done missionary work with Father Joe,
16 that have had their children around Father Joe that will
17 tell this Court there is no concern and there's never
18 been any.

19 THE COURT: Sure. If you have witnesses I'll
20 hear them.

21 We say presumption and rebut. But two things:
22 You can't beat something with nothing. You actually
23 have to propose a release plan. What's the proposed
24 release plan?

25 MR. PASSARELLO: My proposed release plan, Your

1 Honor, is that he be released, that he obviously remain
2 on all the conditions of home detention, that he have an
3 ankle bracelet, that he have a curfew, that he not be
4 allowed around children -- not because we're admitting
5 any of these allegations, basically for his own
6 protection -- that he report subject to any random
7 checks. All that. Anything that the Court wants to put
8 on him that the Court would assure -- and I think that
9 does assure that there's no danger to this community.

10 I think the people that sit here speak volumes
11 for what type of person Father Maurizio is. The type of
12 person that Attorney Haines presented to this Court is
13 not the Father Maurizio I've known for five years. And
14 I'm sure it's not the Father Maurizio these people have
15 known all of their lives. And I think there's a
16 balancing act.

17 And I believe, number one, I don't think they've
18 proven flight risk. I think it's pretty simple to get
19 rid of that risk of flight.

20 Secondly, I think with strict conditions on his
21 release; bracelet, home detention, random checks,
22 reporting every day if the Court wants him to report,
23 and not being around children, not even having
24 computers, cell phones, or any type of media, if the
25 Court wants to put that in. Obviously, I think he

1 should be allowed to watch TV. But besides that, we
2 would agree to that.

3 I just, based upon my history with this case and
4 based upon the credibility of this foreign country, and
5 the hostility and the upheaval in that country, I
6 fundamentally believe that to detain this individual
7 based upon what's presented before this Court today is
8 not in accord with the Act and it's wrong.

9 And I would just ask the Court to release Father
10 Maurizio with the conditions that we have requested or
11 asked for, or whatever any other conditions the Court
12 wants to put on. And I would ask at least to call a few
13 witnesses on his behalf if the Court would allow me to.

14 THE COURT: Sure. Sure, go ahead. Why don't you
15 have all of the proposed witnesses stand and be sworn
16 together, and that way we can cut down on the use of
17 time.

18 MR. PASSARELLO: If we could have stand -- and,
19 Judge, although I'm not going to call all these, but
20 just in case.

21 THE COURT: Okay.

22 MR. PASSARELLO: Christine Shaulis, Joshua
23 Shaulis, Robert Choby, RoseMarie DiLoreto, Charles
24 DiLoreto, Cynthia Howard, Angie Maurizio, Dr. Vince and
25 Joey Vena, Michael Knapp, and Dick Stern.

1 (Prospective witnesses were placed under oath by
2 Courtroom Deputy Price.)

3 THE COURT: Go ahead and call your first witness.

4 MR. PASSARELLO: Initially we'd call Dr. Vince
5 Vena.

6 THE COURT: Now, before counsel even goes on the
7 record, you have a daughter named Aubrey?

8 THE WITNESS: I do.

9 THE COURT: Classmate of my son's. It's a small
10 world.

11 THE WITNESS: It is.

12 THE COURT: And both of our children attended
13 Bishop McCort together. So we already have -- I have
14 never -- I didn't know your name. And then Sunday at
15 church I find out that you were once stationed at my
16 parish.

17 So it's inevitable that there's going to be
18 some -- you know, I've known you probably for 25 years.

19 MR. PASSARELLO: Yes, you have, Your Honor.

20 THE COURT: I've worked with Attorney Haines for,
21 I don't know, however long it's been, and so.

22 MR. PASSARELLO: Every time I see you now you
23 tell me how much older I'm getting.

24 THE COURT: Yeah, yeah, and vice versa. So
25 anyhow, I've had people on my -- anyway. Okay, and the

1 court reporter, it's the doctor who operated on her leg,
2 so it's a small world.

3 MS. PRICE: Sir, would you state your full name,
4 please.

5 THE WITNESS: Yes. Vincent E. Vena, V-E-N-A.

6 Your Honor, thank you for allowing me to speak
7 today.

8 MR. PASSARELLO: Well, hold on. I've got to ask
9 you some questions.

10 THE COURT: Go ahead.

11 DIRECT EXAMINATION

12 BY MR. PASSARELLO:

13 Q. Dr. Vena, let me ask you, How do you know Father Joe
14 Maurizio?

15 A. I've known Father Joe for 17 years.

16 Q. And in what capacity do you know him?

17 A. My initial exposure to him was as a hospital
18 chaplain at Conemaugh when I was a young physician
19 there. We have since had many interactions. He was at
20 one point associated with St. Stephens Parish where I
21 was a parishioner. We have had the opportunity early in
22 his mission work to help try to organize a medical team
23 for Honduras. We've been very supportive of his mission
24 work in the Honduras.

25 I have since had the opportunity to directly

1 attend -- be with him on mission work in Costa Rica,
2 with my family and my boys and my daughter.

3 Q. In any of your associations, especially on your
4 mission trips with Father Joe, have you seen him do
5 anything inappropriate, such as the allegations here
6 today?

7 A. Absolutely not. I think you have a small army of
8 people here that will testify to the character of Father
9 Joe as an individual who is absolutely committed to
10 helping some of the most desperate people in the world.
11 And I've had the opportunity to witness that firsthand.

12 Many of these kids, most in this room couldn't
13 appreciate what they're going through. They have no
14 families, they have no support system. Many of the
15 communities they're in treat them as they're rats.
16 Father Joe is driven to help them and, you know, his
17 many trips are involved in that.

18 I have had the opportunity -- my wife, Joey is here
19 today with me. She has attended early in the mission
20 work in the Honduras directly with him there working,
21 had the opportunity to assist not only at the orphanage
22 but in the prison system.

23 I recently -- last year, maybe two years ago, I
24 can't recall -- was with him for a two-week trip to
25 Costa Rica where we did mission work and actually spent

1 time, leisurely time, vacation, if you will, with Father
2 Joe, which is unusual for him.

3 And I will tell you, to see how these children
4 respect is what I would describe it as, you know,
5 because no one else is supporting them, I will tell you,
6 in many cases.

7 So to answer your question, no. I have never
8 witnessed, with my own family or with any other
9 interaction around these children, any behavior that was
10 unbecoming of someone who is otherwise just priestly,
11 faithful, and committed to helping.

12 And I will tell you, my training allows me to see
13 concerning behavior. I'm trained to look for it, if you
14 will. You know, the grooming, the other activities that
15 would take place in a predatory nature. None of that.

16 Q. Do you have children?

17 A. I do.

18 Q. How old?

19 A. I have three children. They're all teenagers now.

20 Q. Girls, boys?

21 A. I have an older girl, she's 18. And then I have two
22 boys who are now 16 and 13.

23 Q. Would you have any concerns leaving those children
24 with Father Maurizio?

25 A. No. And I have. You know, it's -- none at all.

1 MR. PASSARELLO: Thank you.

2 THE COURT: The government gets to cross examine
3 you.

4 CROSS-EXAMINATION

5 BY MS. HAINES:

6 Q. Sir, I believe you said that you accompanied Father
7 Maurizio to a recent mission trip in Costa Rica.

8 A. Yes, ma'am.

9 Q. Were you present then when there was a transmission
10 from Father Maurizio to the 16 year old where he asked
11 if the boy was asking -- or do you want me to come and
12 spend the night with you? Were you present when that
13 transmission from the father went to the 16-year-old
14 boy?

15 A. No.

16 Q. Would you agree with me, too, that someone who would
17 be engaging in inappropriate and criminal sexual
18 behavior with children would not do it right out in
19 front of you or your wife? You would agree with me,
20 would you not?

21 A. I would agree.

22 MS. HAINES: Okay. No further questions.

23 THE COURT: Anything else?

24 MR. PASSARELLO: No, Your Honor.

25 THE COURT: All right. Thank you, Doctor, you

1 may step down.

2 MR. PASSARELLO: Your Honor, I would call Joey
3 Vena.

4 MS. PRICE: Would you state your full name,
5 please.

6 THE WITNESS: Yes. I'm Dr. Johanna Vena.

7 DIRECT EXAMINATION

8 BY MR. PASSARELLO:

9 Q. And, Dr. Vena, are you familiar with Father Joseph
10 Maurizio?

11 A. Yes, I am.

12 Q. And how are you familiar with him?

13 A. I have known Father Maurizio for over 15 years, as
14 he was a priest at our parish, as a personal friend, and
15 from doing mission work in Central America with him.

16 Q. Now, that was your husband that testified
17 previously?

18 A. Correct.

19 Q. He indicated you had done -- you were actually in
20 Honduras with Father Joe?

21 A. That's correct.

22 Q. And have you ever seen Father Joe act in any
23 inappropriate way with minor children, as alleged by the
24 United States?

25 A. I have seen Father Joe interact with many children

1 on many occasions, and never was there any concern of
2 any inappropriate behavior. He treats every child, as
3 well as every adult, on these mission trips with the
4 utmost respect. And I've seen nothing but respect
5 returned to Father Joe in appreciation from the
6 children, the orphans, and the people who are working in
7 the missions.

8 Q. These children in the Honduras, how are they treated
9 down there?

10 A. Well, in the missions they're treated very well.
11 But these are children that come off the streets and, as
12 my husband said, there's no, no safety net for these
13 children. And the government, before the orphanages
14 were opened, would shoot these children who were
15 homeless and causing problems on the street. They were
16 very desperate.

17 Father Joe gave them a place of safety. He gets
18 them healthy, he educates them, he gives them a future.
19 And Father Joe I know would never do anything to hurt
20 these children. He's committed his entire life to
21 helping these children who otherwise likely would never
22 survive and certainly have no future.

23 Q. You have children, obviously?

24 A. Three.

25 Q. Would you have any concerns leaving them with Father

1 Joe?

2 A. I have left Father -- our children have interacted
3 with Father Joe on numerous occasions. I've never had
4 any concerns. One of my children is here to show the
5 support and how strongly we feel that Father Joe would
6 never do anything to hurt our children or any others.

7 Q. Have your children ever complained he's done
8 anything inappropriate?

9 A. Never.

10 MR. PASSARELLO: I have nothing further.

11 THE COURT: Okay. The government gets to cross
12 examine you.

13 CROSS-EXAMINATION

14 BY MS. HAINES:

15 Q. Ma'am, you would agree with me you haven't been on
16 every single mission trip with Father Maurizio, have
17 you?

18 A. I have not.

19 Q. And would you also agree with me that there have
20 been times on some of the trips where he was accompanied
21 by people that Father Joe would go down either before
22 the rest of the group would arrive or stay a little
23 longer? Is that correct?

24 A. I would not be aware of that.

25 Q. So it didn't happen on your trips, but it may have

1 happened on other trips?

2 A. I would not know.

3 Q. And would you agree with me, as I asked your
4 husband, that someone who would be engaging in the type
5 of conduct that has been alleged today probably wouldn't
6 do that out in front of you or your husband. Correct?

7 A. I agree.

8 MS. HAINES: Thank you.

9 MR. PASSARELLO: I have nothing further.

10 THE COURT: Dr. Vena, just one question: The
11 time frame of the trips that you made with the
12 defendant, when was that?

13 THE WITNESS: The Honduras trip was in the early
14 2000s, and the Costa Rica trip was two years ago.

15 THE COURT: Thank you.

16 MR. PASSARELLO: Judge, I would call Angie
17 Maurizio.

18 MS. PRICE: Would you state your full name,
19 please.

20 THE WITNESS: Angela L. Maurizio.

21 DIRECT EXAMINATION

22 BY MR. PASSARELLO:

23 Q. Ms. Maurizio, real briefly, where do you reside?

24 A. 809 Sugar Maple Drive, Windber. My brother's farm.

25 Q. So you live with him?

1 A. In the last two weeks, yes. I've been there for a
2 year.

3 Q. If he is released would that be where he would be
4 residing?

5 A. Yes.

6 Q. And you would be living with him there as well?

7 A. Yes.

8 Q. And if there were conditions placed upon him by this
9 Court would you help to assure that they're followed?

10 A. Yes.

11 MR. PASSARELLO: Thank you. I have nothing
12 further from this witness, Your Honor.

13 THE COURT: Cross examine.

14 MS. HAINES: No questions, Your Honor.

15 THE COURT: The government has no questions.
16 Thank you.

17 MR. PASSARELLO: Judge, most of the other
18 witnesses would testify substantially similar to the two
19 doctors, and so based upon our presentation today, I
20 would ask that the Court consider release for Father
21 Maurizio.

22 THE COURT: All right.

23 MS. HAINES: Your Honor, I neglected to put one
24 factor forth when we were going back and forth. The
25 United States has further information just for the Court

1 to consider. The agents were able -- and they actually
2 have a copy of it -- the Honduran authorities have
3 signed off on an arrest warrant for Father Maurizio.
4 And I guess, as I understand it, the steps they take in
5 Honduras to secure his arrest is they sign the arrest
6 warrant, which has been signed, and then they turn it
7 over to INTERPOL as well as the Honduran police.

8 So we're in that intermediate step where they've
9 let us know that they've got it signed. They just need
10 to turn it over to INTERPOL, which will then cause a red
11 notice to go out, which would require him to go into
12 custody as a result of an INTERPOL arrest warrant
13 through Honduras.

14 THE COURT: The United States is party to an
15 extradition treaty with the Honduras?

16 MS. HAINES: I believe we are. I've talked with
17 the CEOS, the Center for Exploited Children out of
18 Washington, D.C. The way she explained it to me it's a
19 very old treaty, but what would happen is if an arrest
20 warrant was issued through INTERPOL on the father, which
21 it appears they are taking those steps, that Father
22 Maurizio would be taken into custody in this country and
23 have to fight extradition back to Honduras while he
24 remained in custody here so --

25 THE COURT: Right.

1 MS. HAINES: -- that's my understanding.

2 THE COURT: Yeah. I presume we just don't whisk
3 people away.

4 MS. HAINES: No. As Washington, D.C., alerted
5 us, that once that arrest warrant that has been signed
6 gets into Interpol's hands and the red notice is out, he
7 will be taken into custody but will have to be in
8 custody to fight it.

9 But for whatever that's worth, that has not
10 happened yet. Of course, we stand on the fact that we
11 in the Western District of Pennsylvania have laid
12 sufficient grounds that have not been rebutted for risk
13 and danger --

14 THE COURT: When you say "that has not happened,"
15 what is the "that"?

16 MS. HAINES: We have a copy of the signed arrest
17 warrant.

18 THE COURT: They just haven't entered it into
19 the system.

20 MS. HAINES: They have not entered it or turned
21 it over to INTERPOL yet, which we believe may -- it
22 could happen today or any day. They've just alerted us
23 that they've had it signed.

24 THE COURT: All right. So we could have spared
25 the lurid details that the news media's in the back

1 busily taking down if you'd just told me that release or
2 detention is a moot point.

3 MS. HAINES: It's not a moot point though, Your
4 Honor, that's the thing. It's not a moot point because
5 until the Honduran authorities turn it over to INTERPOL
6 it's just a piece of paper they have signed. They
7 simply let us know, here's a picture of it --

8 THE COURT: All right.

9 MS. HAINES: -- if you guys proceed with your --

10 THE COURT: I understand.

11 MS. HAINES: -- case.

12 THE COURT: Yeah. I understand that. All right.

13 MR. PASSARELLO: Your Honor, I apologize. But it
14 definitely is not a moot point. It's my understanding
15 that back in 2009 a substantially similar document was
16 signed and nothing went -- happened with that in
17 Honduras. Our legal team in Honduras is investigating
18 this document that they are referencing that, in fact,
19 we have known about. I believe it allegedly was signed
20 approximately one month ago. I don't believe it's a
21 moot point because of what happened five years ago. The
22 same thing could happen substantially again. And if
23 you're going to detain him based on the fact that we
24 have mere speculation that they could be filing this
25 with INTERPOL and they take him into custody, I don't

1 think that's appropriate.

2 THE COURT: Right. On the other hand, my charge
3 is to make sure that he is available for hearing in this
4 case.

5 MR. PASSARELLO: Correct.

6 THE COURT: And if he is whisked away to have to
7 fight extradition on a charge from Honduras, that's just
8 as much of a problem from my point of view, under my
9 duty under the statute, as if he fled to, you know,
10 outer Mongolia. So the status of the charges in the
11 Honduras are significant.

12 All right. Now, there are two competing points
13 of view here: We have some charges from 2009 which you
14 say are trumped up by hostile Honduran authorities, that
15 are completely at odds with everything else that the
16 defendant has done over the last 15 years.

17 The government's position is that we have some
18 horrific circumstances, which for some reason the ball
19 was dropped in 2009, but now are coming to light.

20 What's interesting to me is that in 2014, this
21 summer, we have a border search, perfectly legal under
22 the Fourth Amendment, seizing the cell phone. And then
23 we have an execution of a search warrant which comes up
24 with at least an image, maybe images, of child
25 pornography.

1 And I completely don't regard the possibility
2 that there might be thousands of other images on these
3 multiple things that were seized, because if it isn't
4 here in court it's not evidence. And so the possibility
5 of something is it's a possibility, but it's not
6 evidence.

7 But let me ask this, Attorney Passarello: You
8 got a guy who knows, who believes, who's had attorneys
9 defending himself since 2009 against these charges. And
10 yet on his computer, which is seized in September of
11 2014, we have an image which, subject to defenses, is
12 illegal child pornography.

13 Since it would be crazy for me to possess
14 something like that if I knew there were false
15 accusations out there, what possible reason would there
16 be for him to possess something like that? And this is
17 -- I'm thinking out loud for both of counsels' benefit.

18 What you're describing is Jekyll and Hyde.
19 Father Jekyll and Mr. Hyde. You've got wonderful
20 things, you've got terrible things. You've got one
21 person though. I can't let Dr. Jekyll go free and
22 detain Mr. Hyde. So, you know, do we -- don't you see
23 that there's some evidence here? I mean, a 69-year-old
24 man who's got photographs of minor boys naked sounds
25 more of a compulsive thing to me than anything else.

1 And if we have somebody who's under some kind of
2 compulsion, don't we have a danger to the community?

3 MR. PASSARELLO: Your Honor, if I may?

4 THE COURT: Yeah. Sure.

5 MR. PASSARELLO: First of all, I don't believe we
6 have someone who's under the compulsion --

7 THE COURT: Well --

8 MR. PASSARELLO: If you listen to the United
9 States' presentation the image -- of course, I have yet
10 to see it -- the image was found on a rectory computer,
11 and that they indicated here that they intended or will
12 attempt to try to show that Father Joe actually took
13 that picture. They haven't any proof of that. There's
14 no proof that Father Joe even knew it was on that
15 computer.

16 THE COURT: But there I can follow a chain of
17 inferences that if the person is at a mission where he
18 was -- unless there's some evidence that there's
19 somebody else at the rectory who would have had the same
20 access and the same -- yeah. I think that chain is
21 satisfactory.

22 MR. PASSARELLO: Or even a time and date when
23 that was taken.

24 THE COURT: Oh, sure. When we're talking proof
25 beyond a reasonable doubt this isn't even -- this

1 doesn't even step up to the plate.

2 MR. PASSARELLO: But I think if we're talking
3 compulsion, Your Honor, you'd have way more than just
4 one image on the computer -- I'm sorry, two, they've
5 alleged two. It's absolutely an affirmative defense to
6 the statute in the first place.

7 THE COURT: Yeah --

8 MR. PASSARELLO: I agree. Listen, I agree. If
9 somebody -- if we knew these allegations were 2009,
10 maybe you'd think that if there were any images on the
11 computer somebody would try to wipe them clean. I just
12 don't see the compulsive behavior that this Court is
13 seeing based upon those images.

14 What I see, I see a lot of speculation here. I
15 see a lot of guess. I see a lot of -- you say we have a
16 Jekyll and Hyde, okay --

17 THE COURT: I say that's a possibility.

18 MR. PASSARELLO: I believe the individual that
19 has been portrayed by us and our witnesses are based
20 upon fact and testimony that we've presented to this
21 Court.

22 The other individual that the Court sees is based
23 upon a proffer on speculation. And the bottom line to
24 me, Judge, is Father Joe, as I've known him, is a good
25 man. He has done wonderful work, and I don't think

1 there's any debate about that.

2 I think that the charges that we've addressed in
3 2009 and the charges that we intended to address here,
4 you have to say where the source is coming from. And I
5 just think that the precautions and the statute that the
6 Court has to look at and the factors, we can obviously
7 get rid of flight risk, and I think we can protect the
8 community, whatever concerns the Court has or the United
9 States has, by putting those specific and strict
10 conditions on his release.

11 THE COURT: Okay.

12 MR. PASSARELLO: And we let INTERPOL do what
13 Interpol's going to do if they, in deed, are going to do
14 anything. The Court's absolutely right, the FBI had
15 this back five years ago. And you characterized it as
16 dropping the ball; I characterize it as there was
17 nothing there.

18 THE COURT: No. I said that's the supposition
19 here that they're advancing, yeah.

20 MR. PASSARELLO: I would ask that the Court
21 consider release.

22 THE COURT: All right. Why speculate when we can
23 actually have evidence?

24 Attorney Haines, how long does it take the
25 government to do a forensic analysis of the devices

1 seized?

2 MS. HAINES: I was there on -- last week I was in
3 their office. They were working around the clock. They
4 have gone through, like I said, there are thousands and
5 thousands of images. There were four computers -- five
6 computers. There was one camera that had approximately
7 18,000 photos on. They are flagging photos that raise
8 the eyebrow.

9 And just to give you an example of how it's
10 going, I asked them to estimate to get through all of
11 everything you have -- they know everything they have --
12 how long. They said, If we worked around the clock from
13 the day I was there, they said we'd need three more
14 weeks. But they showed me what they were already
15 flagging.

16 Obviously, just for the record and for clarity,
17 there are -- the child pornography images, there are
18 two. Of the one that is clear-cut, not a question in
19 the agents' minds, I've seen them as well -- it's
20 clear-cut child pornography. It's of the same child but
21 two pictures; one from a distance and one right up on
22 the child.

23 THE COURT: Right.

24 MS. HAINES: They are also flagging any and all
25 pictures that appear to have children who are naked.

1 There are a few pictures they have flagged from his
2 recent trip to Costa Rica -- excuse me, the Dominican
3 they have flagged where he takes a picture of the whole
4 child. And then he takes a picture just of the waist
5 down. And they have flagged those pictures as well,
6 where there's a sequence of pictures. So that's the
7 process they're going through.

8 Then you add in the Google app translation that
9 we've talked about --

10 THE COURT: Right. Okay. I don't need to rehash
11 the evidence. What I'm asking is when do you think you
12 might have something that's new? Because going to the
13 website in July is, you know, first of all, that's not
14 illegal at all. And the, you know, somebody having
15 18,000 photographs, if they are a camera -- you know,
16 I'm not a camera guy, but there are people who take
17 thousands and thousands and thousands of pictures.

18 So the other thing -- as you and I and Attorney
19 Passarello and pretty much everybody, Agent Bossart over
20 here and Marshal Frank as well, know that somebody who
21 is into child pornography they're just leaking out at
22 the seams. There's tons of it, there's not just one or
23 two images.

24 So how long before you think you -- you say three
25 weeks.

1 MS. HAINES: Well, like I said, they said three.
2 But there are images that we are calling right now child
3 erotica, but when they are analyzed and looked at by the
4 experts who make those decisions, there are definitely
5 sequences of pictures that they've set aside that are
6 quite suspicious that may or could be argued to be child
7 pornography because the way they're taken.

8 We've just pointed out the two that are
9 clear-cut. But there's groups of other pictures that we
10 have flagged and looked at that we could make argument
11 for as potential child pornography because of the way
12 they're taken, the way the focus --

13 THE COURT: All right. "Could make an argument
14 of potential child pornography." Make an argument that
15 you've got child pornography.

16 MS. HAINES: We did. We charged him because of
17 the two pictures we have of the child that's posed with
18 lascivious exhibition of his genitalia. We have charged
19 him with that in the complaint.

20 THE COURT: Right.

21 MS. HAINES: Obviously, that we did immediately
22 when we found them. We obviously have 30 days to
23 indict. As we continue our investigation --

24 THE COURT: Right. Right. Oh, yeah. Yeah. I
25 signed the arrest warrant based on -- yes. I know you

1 got probable cause to arrest. Yes. Yes.

2 But I'm talking about what do we have here that
3 meets the statutory standards of danger to the
4 community?

5 MS. HAINES: Your Honor, we went through that.
6 First of all, there's a presumption of detention. We
7 have his behavior back in 2009. That's why it was
8 important that we went through the facts. We have the
9 recent findings. We also have a YouTube video that
10 was -- for what it's worth -- that they found and
11 tagged. So looking at his YouTube videos, they are
12 looking --

13 THE COURT: All right. All right.

14 MS. HAINES: One of them --

15 THE COURT: The YouTube video, tell me about the
16 YouTube video.

17 MS. HAINES: There's a YouTube video that
18 immediately caught the agents' eyes. It's a YouTube
19 video entitled, "little white boy gets raped by black
20 man." Now, I mean, that obviously raises an eye. You
21 open the video of -- obviously by what it's called it's
22 very concerning. You open the video. It's of a white
23 young male -- from what you can see of the screen shot,
24 it appears to be an adult white male that's literally
25 being beat up and raped by a black male.

1 THE COURT: So it's --

2 MS. HAINES: Now, those things they are just
3 going through. All these things are being, you know --

4 THE COURT: All right. It's lurid, but it's not
5 child pornography is what you're saying.

6 MS. HAINES: We don't believe it is, no.
7 However, you can't just look at that in and of itself
8 and say, okay, that YouTube video. In the big, grand
9 totality of the circumstances we've got images of child
10 pornography. We've got a Google app where he's asking a
11 16-year-old child if he'll spend the night with him.
12 Like I said, we have potential victims coming forward as
13 a result of this hitting the media saying we believe
14 there are victims here locally. You have the probation
15 office who's done an investigation. They are
16 recommending detention for him as well based on flight
17 and danger.

18 THE COURT: All right. Anything else?

19 MS. HAINES: No, Your Honor.

20 MR. PASSARELLO: No, Your Honor.

21 THE COURT: All right. Something that nobody has
22 talked about that arises in the pretrial services report
23 is that despite the forfeiture of the passport the
24 defendant has substantial financial resources, including
25 some things that the defendant has declined to produce

1 or to make any comment on or to give any additional
2 details.

3 Where I have somebody who is an international
4 traveler and is able to move in interstate commerce
5 even, and I don't know what kind of resources he has at
6 his disposal, that's a huge red flag for me.

7 So I am going to detain him for two reasons: One
8 is, I am not satisfied that the risk of flight -- I am
9 not concerned about danger to the community. And,
10 frankly, the case against the defendant is a lot weaker
11 where the government hasn't even asked for detention.
12 We have what may be an avalanche of child porn on seized
13 equipment. But right now we have a bunch of lurid
14 accusations. We have one image that would qualify as
15 child pornography, subject to any affirmative defenses.

16 On the other hand, the fact that I don't -- I am
17 not charged with determining guilt or innocence. I am
18 charged with making sure that there's no danger to the
19 community and that the defendant actually be available
20 for trial.

21 It does concern me that Honduras happens to be
22 heating up. Whether that's politically motivated I have
23 no idea. Whether that's based on a fresh look at the
24 evidence I have no idea. I do know that if that goes
25 through I lose jurisdiction over the defendant, and

1 that's a problem for me. More problematic from my point
2 of view is that without understanding of what resources
3 are available to the defendant should he choose to flee,
4 I am unable to really make an accurate judgment as to
5 what is the risk of flight. And this is a presumption
6 case, so where I have a doubt or a lack of knowledge, my
7 default position is to detain, and that's what I have to
8 do.

9 MR. PASSARELLO: I can provide information on his
10 investments.

11 THE COURT: Well, that's what I'm coming to.

12 What I want from this, I want the government to
13 give me, as soon as possible, what they've got that
14 justifies their claim that this guy has child
15 pornography. Because right now we don't have evidence.
16 If they rebut the risk of flight issue, I don't think
17 you've got danger to the community. You have a
18 statutory presumption, which is rebutted by the proposed
19 terms of release which would include, Attorney
20 Passarello, encumbrance on any assets.

21 If this guy has a farm that can be turned into
22 cash I want a property bond. I know I'm going to hear
23 about it from the clerk's office because property bonds
24 are a pain in the rear to do. But I want any
25 possibility that this individual has resources that

1 would make him a risk of flight, I want that cancelled
2 out. So I would need full disclosure from you about
3 financial resources and encumbrances on them.

4 From the government's point of view, if you're
5 seriously maintaining that this guy is such a danger to
6 the community that there are no conditions that could
7 assure the safety of the public, notwithstanding the
8 fact that these allegations have been out there for five
9 years, because those allegations from John Does 1, 2,
10 and 3 that you're relying on, not the child pornography
11 that's more recent -- if you're telling me he's a danger
12 to the community I want to see some proof, some
13 evidence, that there is something on his computer that
14 indicates what I've termed as a compulsion.

15 MS. HAINES: Your Honor, are you asking that you
16 would like the agents to bring into your private office,
17 obviously, and click through everything they've tagged
18 to show you, including the images of the --

19 THE COURT: No. I'm not going to do their job
20 for them. Once they've sorted through tell them to
21 bring me what they think -- I've done that before in
22 camera --

23 MS. HAINES: We can bring you right now all that
24 we have already, just scratching the surface. We'll
25 provide all of it to you in your office if you want

1 tomorrow. We'll click through them all and show them to
2 you what we've already flagged.

3 THE COURT: Okay. Well, let's not spend my day
4 looking at 18,000 images. Pick out --

5 MS. HAINES: Oh, no, just the ones that are
6 relevant --

7 THE COURT: Yeah. Give me your ten worst case
8 scenarios and I'll look at them. If you've got them now
9 we can step out into the hall and we'll look at them
10 now.

11 MS. HAINES: They're back in, HSI Pittsburgh has
12 them in their forensic lab.

13 THE COURT: Can they --

14 MS. HAINES: We can't transmit them.

15 THE COURT: No, obviously, you do not want to
16 transmit child pornography over --

17 MS. HAINES: No. They would have to be
18 downloaded onto a disc and then hand carried to your
19 office, which I can absolutely have the agents do and we
20 can provide that to you and sit there and look at them.

21 THE COURT: Let's do that. Now, in the meantime,
22 for reasons that I've already stated, on the risk of
23 flight ground only I'm going to order detention.

24 MR. PASSARELLO: Your Honor, if I may. Would you
25 like me to direct the investment information directly to

1 your chambers?

2 THE COURT: Yes. Yeah, if you want to -- if you
3 can get that to me within the same time frame as the
4 government is getting their evidence to me that would be
5 appreciated.

6 MR. PASSARELLO: I will try to get that to you
7 either today or first thing tomorrow. With the
8 understanding, Your Honor, that obviously, the retaining
9 of investigators and the defense team in Honduras costs
10 money.

11 THE COURT: Is an encumbrance itself, yes.

12 MR. PASSARELLO: We would need -- can't deny him
13 the right to counsel or the right to present a defense,
14 so we just would ask the Court to take that into
15 consideration.

16 THE COURT: Right. Well, you know, one of the
17 things that certainly should be apparent to everybody is
18 that we have minor children of desperate economic
19 circumstances, probably not literate in English, in
20 Honduras, some of whom are deceased. Charges which --
21 not those charges, but other charges, which would put
22 this defendant in jail for the rest of his natural life.
23 This is going to be a long, drawn-out process. Pretrial
24 proceedings alone, given the requirement of translation,
25 investigation, confrontation, are going to be

1 protracted.

2 I am very aware -- you know, I am very aware --
3 probably less so than the prosecutor and the agents of
4 HSI, because you guys have to deal with it on a much
5 more frequent basis than I -- I'm very aware of the
6 nature of the charges and the importance of the charges.

7 But at the same time, the practical reality of
8 the government's request for detention on the basis of
9 the claim that there are no conditions that can assure
10 the safety of the public, would result in the
11 incarceration of somebody for a period of years as we
12 run up to the trial process on, at this point, nothing
13 more than what are accusations. So I hope everybody is
14 quite aware of what's at stake here beyond just the dry
15 words of the statute.

16 The defendant stands committed.

17 We are in recess.

18 (Proceedings concluded at 11:24 a.m.)

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1 CERTIFICATE OF OFFICIAL REPORTER

2
3 I, Kimberly K. Spangler, Federal Official Court
4 Reporter, in and for the United States District Court
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6 certify that pursuant to Section 753, Title 28, United
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